

Exhibit 17 Supplement

Moody Deposition

Robert Moody Deposition

Pages: 15, 28, 31, 33, 34, 37, 45, 47, 48, 49, 50, 52, 53, 63, 64, 65, 66, 69, 70, 82, 84, 86, 87, 88, 89, 90, 91, 95, 98, 99, 100, 101

Dated: December 23, 2020

Robert Moody

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES JOSEPH FREITAG, JR., as ADMINISTRATOR of the ESTATE OF CHARLES JOSEPH FREITAG, SR.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
BUCKS COUNTY; PRIMECARE MEDICAL, INC.; STEPHAN BRAUTIGAM, PMHNP;	:	
JESSICA MAHONEY, PSY.D.;	:	
AVIA JAMES, LPC;	:	
CHRISTINA PENGE, LPC;	:	
JOHN DOES 1-10,	:	
Defendants.	:	

— — — — —

December 23, 2020

— — — — —

Oral deposition of ROBERT MOODY,
taken on behalf of the Plaintiff, via
videoconference, on the above date, commencing
at 9:51 a.m., before Linda A. Ricciardi,
Certified Court Reporter.

KAPLAN LEAMAN & WOLFE
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Philadelphia, Pennsylvania 19102
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1 BY MR. FEINBERG:

2 Q. Is there anything that you could have
3 done to prevent Mr. Freitag from killing
4 himself?

5 A. Not to my knowledge, no.

6 Q. Did you do everything you were suppose
7 to do under Bucks County policies and
8 procedure?

9 A. Yes, I believe so.

10 Q. Do you remember what level of
11 precaution, if any, Mr. Freitag was on at that
12 time?

13 A. I believe he was level 3, regular
14 watch. It was a long time ago.

15 Q. As we go through today I will show you
16 a few documents, which will help to refresh
17 your recollection. At this point I am asking
18 you questions just about what you know or what
19 you remember.

20 With that said, Mr. Moody, is it your
21 recollection that you complied with all
22 policies and procedures concerning a level 3
23 watch?

24 A. Yes.

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1 throughout the day in the schedule?

2 A. Yes.

3 Q. Built into that schedule I assume you
4 have responsibilities to conduct checks on
5 prisoners who are on a variety of different
6 status checks; is that right?

7 A. Yes.

8 Q. Do you do anything special to build
9 that into your schedule?

10 A. You do as many tours as you can within,
11 you know, your ability. Things come up, you
12 got medication comes down, phones start
13 ringing, you know, but you do tours every half
14 hour.

15 Q. Is the rule that you should do the
16 tours approximately every half hour or within
17 at most 30 minutes?

18 A. You try to get in 30 minutes, but like
19 I said, sometimes medication goes on, you know,
20 something comes up that is, you know, takes
21 your availability.

22 Q. Let's get more into the levels of
23 precautions that we talked about just a moment
24 ago. To do that let me ask you, did you

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1 whether any of them focused on identification
2 of suicide risks, suicide precautions or
3 anything along those lines?

4 A. Not really, no.

5 Q. Based on the understanding that you
6 developed over your 12 years at the prison or
7 at the point in 2018 your ten years at the
8 prison, would you say that you were generally
9 aware of how to identify suicide risk from the
10 perspective of a correctional officer?

11 A. To an extent.

12 Q. I take if that you were certainly aware
13 that suicide risks are something that you have
14 a responsibility to be aware of if they are
15 presented to you; is that correct?

16 A. Yes, sir.

17 Q. Are you aware that generally there are
18 all types of risks that could be presented in a
19 prison environment for suicide or self harm?

20 A. What do you mean?

21 Q. Let me do this, rather than giving you
22 my words I will show you a Bucks County policy.
23 Bear with me for a second.

24 (Whereupon suicide prevention

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1 A. Yeah, I think they are on the computer
2 now. I hope they are on the computer now.

3 Q. Typically you have access to a computer
4 terminal during your work shift; is that right?

5 A. Not always, no.

6 Q. If you need to access a computer you
7 can do so, right?

8 A. Yeah.

9 Q. As you can see here on the screen in
10 front of you, I am paging through this policy,
11 I want to highlight one particular, bear with
12 me for a second, sir. So this text that is
13 highlighted here in the middle of the page
14 where my cursor is, I am going to read this
15 first part of the sentence to you and ask you
16 whether it is something you are familiar with.
17 Inmates may become suicidal at any time during
18 their incarceration. First I will stop there.

19 Is that a principal that you are familiar with?

20 A. Yes.

21 Q. Suicidal behavior is more likely at
22 critical periods of time, including commitment
23 and the first several days thereafter, court
24 hearings, sentencing and I will stop there.

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1 Are you familiar with that principal as well?

2 A. Yes.

3 Q. Specifically because it relates to Mr.
4 Freitag I will ask you, have you heard that
5 before August 2018 when a prisoner goes to
6 sentencing there may be an enhanced risk of
7 suicidal behavior?

8 MR. KOLANSKY: You are talking
9 generally?

10 MR. FEINBERG: That's right.

11 MR. KOLANSKY: Okay.

12 BY MR. FEINBERG:

13 Q. Do you understand my question, sir?

14 A. Yes.

15 Q. I take it you had heard by August of
16 2018 that principal?

17 A. In general, right?

18 Q. Yes.

19 A. Yes.

20 Q. Let me put that document away.

21 Actually as one slight aside, is there any
22 policy or practice that you are aware of, sir,
23 concerning how to handle prisoners who come
24 back from sentencing?

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1 have been addressing this topic, sir, let me be
2 more explicit about it. Would you agree as a
3 rule in your job as a correction officer you
4 have to act in a way to protect prisoners in
5 your custody?

6 A. Yes.

7 Q. That is the most important job you
8 have; is that right?

9 A. Yes.

10 Q. There are rules in place that tell you
11 what you have to do in order to protect
12 prisoners in your custody; is that right?

13 A. Yes.

14 Q. You have to follow those rules; is that
15 right?

16 A. Yes.

17 Q. For example, common rule which basic
18 common sense, prisoner is not allowed to have a
19 weapon in the facility; is that right?

20 A. Like a real weapon, like?

21 Q. Well, anything that can be used as a
22 weapon, you know, a toothbrush carved into a
23 sharp object, you are not allowed to have it,
24 right?

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1 monitor would observe the person's activities
2 every 15 minutes; is that correct?

3 A. Yes, they are suppose to, yes.

4 Q. You as an officer would be responsible
5 for observing, you or a fellow officer, would
6 observe inmates on this level of watch in a
7 period not to exceed 30 minutes; is that
8 correct?

9 A. Yes, to the best of your ability.

10 Q. At any given time, let's use the Bravo
11 module as an example, how many people tend to
12 be on the level 3 watch? And before you answer
13 that let me just say, is there an average
14 number or does it vary day by day?

15 A. It varies day by day, it varies by
16 block. Bravo typically wouldn't have too many
17 people on watch.

18 Q. What is the most there would be?

19 A. I guess you could have everybody on
20 watch, but on Bravo alone probably, you know,
21 10 maybe at the most.

22 Q. So why is it that the Bravo module
23 would not, is there anything specific about it?

24 A. It is a general population block, it is

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1 I don't know it.

2 Q. Let's go back then to your involvement
3 in -- actually, I am sorry, one more question
4 on that. When you do, you as an officer do the
5 tours every 30 minutes as part of the level 3
6 watch, are you suppose to just look in the
7 cells where there is a prisoner assigned to
8 that watch or do you look in every cell on the
9 housing module?

10 A. You try to look in every cell.

11 Q. So a standard tour means look in every
12 cell on the modules; is that right? Is that a
13 yes?

14 A. Yes, I am sorry.

15 Q. Let's go back to the specifics about
16 level 3 watch. Do I understand then that level
17 3 watch means that there are going to be six
18 observations of a person on that watch per
19 hour?

20 A. No.

21 Q. Two by the officer, four by the --

22 A. Oh, yeah, yeah, yes.

23 Q. That is something that may be --

24 A. It is not going to be on the paper

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1 though, only the inmate's observations will be
2 on the paper.

3 Q. Let me ask some foundational questions,
4 and then I will come back and we are on the
5 same page about this. You already said to me
6 people who determine level of watch are not
7 you, it is mental health or case managers,
8 right?

9 A. Yes.

10 Q. I take it as a correctional officer,
11 although you have some training like we
12 discussed, you are obviously not a trained
13 mental health watch, right?

14 A. That's correct.

15 Q. So if a trained mental health provider
16 or a trained case manager makes a decision that
17 a specific level of watch is required you as an
18 officer are required to defer to that decision;
19 is that right?

20 A. Yes.

21 Q. I take it based on what I just
22 described when a mental health practitioner or
23 a case manager implements a level 3 watch that
24 person as far as you understand would expect

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1 that the person on watch will be seen six times
2 in an hour; is that correct?

3 A. Yes.

4 Q. When I asked that question before, when
5 I did that math I was not suggesting that you
6 are going to see the person six times an hour,
7 that is the expectation of the person who
8 assigns the watch; is that right?

9 A. Yes.

10 MR. KOLANSKY: Could you clarify
11 that a little bit because you just said that
12 you were not asking or suggesting that he would
13 see them six times an hour but that would be
14 the expectation of the person who set up the
15 watch. I think that is little unclear.

16 MR. FEINBERG: Yeah, I left a word
17 out, thanks Jeff.

18 BY MR. FEINBERG:

19 Q. To your understanding, sir, the
20 expectation of the person who orders the watch
21 is that the prisoner will be seen six times an
22 hour by someone; is that right?

23 A. Yes, by a baby-sitter and an officer.

24 Q. Two for the officer, for the, you used

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1 the phrase --

2 A. Inmate monitor, I am sorry.

3 Q. Sir, I've handled cases against Bucks
4 County years ago, Mr. Ninosky and I had a case
5 together where that phrase was used. In fact,
6 while we are on that topic, do you know when
7 the phrase baby-sitter was formalized as inmate
8 monitor?

9 A. I do not. Everybody called it the
10 baby-sitter since I started, it is obviously
11 the slang, but.

12 Q. Bottom line, sir, in your job as a
13 correctional officer following through on your
14 duties to protect the prisoners in your custody
15 you have a responsibility to make sure that all
16 the provisions of the level 3 watch are carried
17 out; is that correct?

18 A. Yes, to the best of my ability.

19 Q. Would you agree that you have a
20 responsibility to ensure that the inmate
21 monitors do their job?

22 A. Again, to the best of my ability, yes.

23 (Whereupon watch and observation
24 procedures was premarked for identification as

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1 A. All right.

2 Q. So everything you read, sir, is that
3 consistent with your understanding of how this
4 inmate monitor responsibility works?

5 A. Yes.

6 Q. Let me focus specifically on the
7 portions that are highlighted in yellow. Let's
8 just focus on letter E here, which I will read,
9 it is the module officer's responsibility to
10 assure that inmate monitors are using IMFs,
11 inmate monitor forms, correctly. Is that
12 consistent with your understanding of your
13 responsibility, sir?

14 A. Yes.

15 Q. Would you agree that means you have the
16 responsibility to ensure that the inmate
17 monitor is actually going to the cell to make
18 the observation?

19 A. Yes, to the best of our ability.

20 Q. So just by way of example, if an inmate
21 monitor is sitting in his own cell not looking
22 at anybody and just checking off boxes or
23 writing initials or whatever, that is not doing
24 their job, right?

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1 A. No.

2 Q. They are not making their observations,
3 right?

4 A. Correct.

5 Q. You have a responsibility to make sure
6 that happens; is that correct?

7 A. Correct.

8 Q. If they don't do, I say they, if inmate
9 monitors don't do what they are suppose to do,
10 it is the same thing that you not doing the
11 watches you are suppose to do, right?

12 MR. KOLANSKY: Objection, form of
13 the question. You can answer.

14 THE WITNESS: Yes, correct.

15 BY MR. FEINBERG:

16 Q. In your experience, sir, have there
17 ever been any problems with inmate monitors not
18 doing their jobs?

19 A. For the most part, no.

20 Q. Have you ever had an experience where
21 an inmate monitor was literally just sitting in
22 his cell and not doing observations?

23 A. Sometimes you have to find them and
24 remind them of their job. Not too often, they

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1 in a moment, a document labeled Exhibit P-9,
2 which is an inmate regular monitor form; is
3 that right?

4 A. Yes.

5 Q. Do you see that in front of you now; is
6 that right?

7 A. Yes.

8 Q. Have you ever seen this inmate monitor
9 form regarding Mr. Freitag?

10 A. Not that I remember, no.

11 Q. So do you see where my cursor is here,
12 around the 8/24/18 start date?

13 A. Yes.

14 Q. The type of watch is listed as level 3?

15 A. Yeah, regular watch, yes.

16 Q. So can we assume that if this form is
17 filled out and there is a note level 3 starting
18 8/24 that information about the level 3 watch
19 was communicated to the module?

20 A. It should have been, yes.

21 Q. Is there any way that this form would
22 have been started for a level 3 watch if there
23 was not, in fact, a level 3 watch communicated
24 to the module?

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1 A. No.

2 Q. Let's talk about what happened when you
3 located -- strike that -- when Mr. Freitag was
4 found in his cell. What was it that called
5 your attention to Mr. Freitag's cell?

6 A. Another inmate was going up the stairs
7 adjacent to his cell and said, you know,
8 something along the lines that this guy is
9 covered in blood or there is a lot of blood.

10 Q. I take it you hadn't looked inside the
11 cell any time in the minutes before then?

12 A. I just come back from break, roughly a
13 little bit before that.

14 Q. Do you remember the exact words that
15 that inmate used?

16 A. He is covered in blood, I don't know
17 the exact wording.

18 Q. You were just looking down, were you
19 looking down at your memo?

20 A. Yes.

21 Q. We can look at it later, but let me
22 pull it up to make sure we are on the same
23 page. The memo that I have is marked as
24 Exhibit P-15.

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1 (Whereupon memorandum dated August
2 25, 2018 was premarked for identification as
3 P-15.)

4 BY MR. FEINBERG:

5 Q. Do you have that in front you now?

6 A. Yes, sir.

7 Q. This Exhibit P-15 is the same memo that
8 you prepared that day, August 25th; is that
9 right?

10 A. Yes, sir.

11 Q. The memo, the documents I have seen
12 show that it was a Mr. Monachelli who was the
13 one who observed Mr. Freitag in his cell, does
14 that sound right to you?

15 A. Yes.

16 Q. Once that gentleman said this guy is
17 covered in blood what did you do?

18 A. I went over to the cell, I opened the
19 door, I yelled in, he was not responsive. I
20 told Officer Young to call 911 emergency, and
21 he called over the phone. They announced it
22 via loud speaker, and other inmates were trying
23 to look in. I was trying to keep them away
24 from the door.

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1 Medical and some supervisors responded
2 and tried locking up the cells, get some
3 control of the block. I don't really know what
4 they were doing in the cell when I wasn't
5 there, I came back and I pulled him out of the
6 cell so they had more room to work.

7 Q. When you say they, are you referring to
8 medical staff?

9 A. Medical professionals, yes. They
10 continued to do work on him. Eventually the
11 ambulance and EMS responded, and eventually the
12 administration of the jail responded. We
13 emptied the block, and they gave us a break,
14 let us go get a drink, relax and calm down I
15 guess.

16 Q. Was there a lot of blood in the cell?

17 A. I mean, to my opinion, yes, there was a
18 lot.

19 Q. Can I assume that that was a traumatic
20 thing to walk into the cell and see that?

21 A. It wasn't a good day, no.

22 Q. Did you go into the cell and put your
23 hands on Mr. Freitag in any way?

24 A. No.

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1 Onisick's report. I am on page 2 of Exhibit 11
2 of Onisick's report. There are two references
3 in the middle of the page here to correctional
4 officer checks Mr. Freitag's cell, Bravo 3, one
5 at 10:04 a.m. and one at 10:21 a.m., I am not
6 including the seconds. Do you recall whether
7 you were the officer who looked into Mr.
8 Freitag's cell on either of those times?

9 A. It might have been me, I don't recall,
10 no.

11 Q. In a little bit I will show you a video
12 and we will see if we can figure that out. One
13 thing that we note is that assuming this
14 timeline is correct, that there was an officer
15 checking the cell at 10:21 and Mr. Monachelli
16 appears to be the next person who looks in the
17 cell, that is 34 minutes later?

18 A. 34 minutes.

19 Q. Did anybody ever raise with you the
20 fact that no officer had looked in the cell
21 within 30 minutes?

22 A. No.

23 Q. By that I mean, did Mr. Onisick speak
24 to you, did anyone ask you questions about

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1 that?

2 A. No, not that I recall.

3 Q. You already described to us that there
4 was a medical response and that you were given
5 time to kind of collect yourself afterwards; is
6 that correct?

7 A. Not right away, but yes.

8 Q. How long was it before you were given
9 that time to collect yourself?

10 A. I couldn't tell you.

11 Q. Who did you speak with during that time
12 period?

13 A. Nobody really, I went outside.

14 Q. Am I correct that you and Officer Young
15 were the only officers assigned to the block?

16 A. We were also getting broken. We
17 received our breaks from another officer.

18 Q. That was Officer Murphy, correct?

19 A. Yes.

20 Q. Was Officer Murphy on the block at the
21 time Mr. Freitag was located in his cell?

22 A. No, I don't think so, no.

23 Q. Did you speak with Officer Murphy at
24 all about Mr. Freitag that day in the immediate

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1 Freitag being on watch, observations in his
2 cell, would you agree with that?

3 A. I agree with that, yes.

4 Q. Did anyone ever ask you to document or
5 explain what happened earlier in the day?

6 A. No.

7 Q. I want to ask you some more questions
8 about the inmate monitor who was watching Mr.
9 Freitag's cell that morning, and to do that --
10 bear with me for a second, I have too many
11 documents open on my screen here. I am pulling
12 up Exhibit 9. Do you have Exhibit P-9 in front
13 of you, sir?

14 A. Yes, sir.

15 Q. Your name is not on this form here
16 where my cursor is, we see Young's name; is
17 that right?

18 A. Yes.

19 Q. Is there any reason why Young's name is
20 there as opposed to yours?

21 A. My guess is that who was preparing the
22 form had a better knowledge of Young's name and
23 not mine. Like I said, I was hardly ever down
24 there, you know, so they probably saw Young,

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1 at all?

2 A. Not really, no.

3 Q. I take it you are familiar with how
4 these forms work and what the inmate monitors
5 write on the forms, right?

6 A. Yes.

7 Q. Up at the top of the page there is this
8 letter code and the letters, which we will see
9 below, L means in cell, and F means sleeping,
10 right?

11 A. Yes.

12 Q. It looks like, if we look at this
13 portion of the page, which I have highlighted
14 on my screen here, from 8 a.m. through 10:45
15 a.m. would you agree that all of the
16 abbreviations that appear to be entered by Mr.
17 Caldwell say LF?

18 A. Yes.

19 Q. Would you agree that indicates that Mr.
20 Freitag was in his cell and sleeping?

21 A. Based on that, yes.

22 Q. Do you have any idea whether that was
23 true between 8 a.m. and 10:45 a.m.?

24 A. No, sir.

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1 BY MR. FEINBERG:

2 Q. Do you see in front of you, sir, a
3 video screen showing the Bravo module?

4 A. Yes. It looks like Bravo, yes.

5 Q. So on the screen, do you see where my
6 cursor is here, do you see the start time at
7 8:13:55 a.m.?

8 A. Yes.

9 Q. So the video is an hour long, so it
10 goes from 8:13 to 9:13. I am going to fast
11 forward all the way up to, I am now at 58
12 minutes and 36 seconds in, and do you see my
13 cursor on the right of the screen, there is a
14 door to the immediate right of the steps that
15 appears to be open. Do you see that, sir?

16 A. 3 cell, yes.

17 Q. We have identified 3 cell as Mr.
18 Freitag's cell; is that correct?

19 A. Yeah.

20 Q. As I play forward here from 58:38 in
21 there is a man walking out, I know you didn't
22 see him before -- when you discovered him in
23 the cell, but does that appear to be Mr.
24 Freitag?

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1 A. Yes.

2 Q. So 58 minutes in from 8:13 can we agree
3 that Mr. Freitag appears to be out of his cell
4 at 9:11 a.m.?

5 MR. KOLANSKY: Sorry, where do you
6 see the then current time? I see 8:13 but I
7 don't see the 9:11.

8 MR. FEINBERG: We are 58 minutes
9 into the video so adding --

10 MR. KOLANSKY: Okay, down at the
11 bottom I understand. Go ahead, I just didn't
12 see that, thank you.

13 MR. FEINBERG: Sure.

14 BY MR. FEINBERG:

15 Q. Mr. Moody, do you understand the math
16 that I have done?

17 A. Yes.

18 Q. 58 minutes forward from 8:13 takes to
19 9:11 a.m.; is that right?

20 A. Yes.

21 Q. Give or take. Based on other documents
22 that I have seen here, Mr. Freitag is waiting
23 in line for delivery of his medications; is
24 that right?

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1 A. It appears to be that way, yes.

2 Q. Now, my cursor, there are two men at
3 the front of the line where my cursor is, both
4 appear to be in uniform, one appears to be
5 white, one appears to be black. Do you know
6 who those people are?

7 A. I am the one on the left. It appears
8 to be me, I think it is me.

9 Q. The person who is to your left, our
10 right on the screen, who appears to be a black
11 male, do you know who that is?

12 A. No.

13 Q. I am going to continue playing. I am
14 going to play it on fast motion here just to
15 get confirmation that Mr. Freitag appears to be
16 in line all the way through the end of this
17 video. The video has ended, an hour on from
18 8:13, that takes us to 9:13, would you agree?

19 A. Yes.

20 Q. I am going to stop that video. Open up
21 the next one, which for counsel's benefit is
22 labelled under Jeff's firm's Bates stamping
23 441. I will open it, and then I will share it
24 with everybody. As I am sharing it I will

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1 represent to you that this appears to start at
2 9:13. So theoretically the video that we
3 watched to the end, which starts with this new
4 video is continuous, you follow what I am
5 saying, sir?

6 A. Yes.

7 Q. Would you agree that the start of this
8 video that I am showing you now appears to be a
9 continuation from the end of the last one?

10 A. Yes.

11 Q. So as we watch here starting at 9:13
12 a.m., in fact, I will stop at four seconds in,
13 that is yourself walking forward. Can you
14 confirm that is you, sir?

15 A. Yes.

16 Q. So I am going to continue playing, and
17 I will ask you while we are watching here at 15
18 seconds in, you are standing up, Mr. Freitag is
19 right behind you, it doesn't look like you are
20 talking to him, but do you remember any
21 encounters with him now that we are watching
22 this on video?

23 A. No.

24 Q. I am going to speed it up here from 45

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1 seconds. Just ask you to keep your eyes on Mr.
2 Freitag. All right. At two minutes and 20
3 seconds, would you agree that Mr. Freitag
4 appears to have entered his cell.

5 A. Yes.

6 Q. So would you agree that based on the
7 time stamps on the video it was sometime after
8 9:15 a.m. when Mr. Freitag has entered his
9 cell?

10 A. Yes.

11 Q. Do you remember seeing on the inmate
12 monitor form that the inmate monitor, Mr.
13 Caldwell, indicated that Mr. Freitag was in his
14 cell and sleeping at 9:15 a.m.?

15 A. The one you showed me?

16 Q. Yes.

17 A. Yes.

18 Q. Would you agree that appears to be
19 inaccurate based on what you are seeing on
20 video?

21 A. Yes.

22 MR. KOLANSKY: Objection.

23 BY MR. FEINBERG:

24 Q. Do you know, Mr. Moody -- first of all,

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1 in this video do you see any inmate monitor?

2 A. It might have been that guy with a
3 cane. I don't remember the name, obviously,
4 but.

5 Q. I will represent to you I watched a lot
6 of the videos that your counsel has provided,
7 and the inmate monitors typically carry around
8 paperwork so they can check off their logs,
9 right?

10 A. Yes.

11 Q. You tell me, please, if I got this
12 wrong, would you expect that an inmate monitor
13 would have their paperwork in their hand so
14 they can check off as they are doing their job?

15 A. He has a cane and probably a cup in the
16 other hand so it would be kind of hard.

17 Q. So my question is, do you see anyone
18 who has paperwork that looks like they are
19 doing the inmate monitor job at this time?

20 A. No.

21 Q. Let's take that off. I am going to go
22 back to Exhibit 9, the inmate monitor form.
23 Before I do that, actually, for counsel's
24 benefit I am showing Bates stamp 466. Do you

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1 MR. FEINBERG: It is what we marked
2 as Exhibit P-10, it is 418.

3 MR. KOLANSKY: Thanks.

4 BY MR. FEINBERG:

5 Q. Sorry, Mr. Moody, you can read that and
6 let me know when you are finished?

7 A. I am finished.

8 Q. Do you see the second sentence, which
9 says in review of the video there was no inmate
10 monitor observed checking on the inmate. Do
11 you see that?

12 A. Yeah.

13 Q. Do you have any reason to dispute Mr.
14 Bochenek's characterization there was no inmate
15 monitor looking into Mr. Freitag's cell?

16 A. No, I have no reason to dispute it. I
17 don't know if he did or didn't.

18 Q. I am sorry?

19 A. He may have, he may not have.

20 Q. Well, and you don't know one way or the
21 other, right?

22 A. No.

23 Q. So if Mr. Bochenek is correct, that the
24 inmate monitor -- strike that let me back up.

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1 Q. The inmate monitor is suppose to be
2 looking in the cell every 15 minutes, right?

3 A. Yes.

4 Q. And the inmate monitor here, I am
5 putting up Exhibit 9. You have Exhibit 9 in
6 front of you, sir?

7 A. Yes.

8 Q. The inmate monitor form. You would
9 agree that the inmate monitor form shows that
10 the inmate monitor represented that he was
11 looking in the cell between 9:30 -- well,
12 strike that. This inmate monitor, Mr.
13 Caldwell, says he was looking in the cell every
14 15 minutes from 6:15 a.m. all the way through
15 10:45 a.m., right?

16 A. Yes, that is what it appears to me.

17 Q. Assuming the truth of Mr. Bochenek's
18 representation in that memorandum, these
19 notations that I am highlighting between 10:15
20 and 10:45 are incorrect; is that correct?

21 MR. KOLANSKY: Objection.

22 BY MR. FEINBERG:

23 Q. Let me re-ask the question because I
24 jumbled my words. Would you agree, sir, if Mr.

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1 Bochenek's memorandum is accurate that the
2 monitor was not looking in the cell of Mr.
3 Freitag, that the statements on this form
4 prepared by the inmate monitor are inaccurate?

5 A. Yes.

6 Q. You would agree as you said before that
7 is a significant problem, correct?

8 MR. KOLANSKY: Objection.

9 BY MR. FEINBERG:

10 Q. You can answer.

11 A. Yes.

12 Q. The inmate monitor based on that
13 inaccuracy is not doing his job, right?

14 A. Yes.

15 Q. Would you agree that the correctional
16 officers who are supervising that inmate
17 monitor are not doing their job?

18 A. To the best of our ability we would.

19 Q. What efforts did you make to make sure
20 Mr. Caldwell was monitoring Mr. Freitag's cell?

21 A. Just check the paper. We probably
22 didn't check by then because it is still pretty
23 early.

24 Q. Sitting here today do you know whether

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1 Mr. Caldwell looked into Mr. Freitag's cell a
2 single time on the morning of August 25th?

3 A. I don't know.

4 Q. Would you agree it is your
5 responsibility as an officer working on that
6 block to ensure that Mr. Caldwell is fulfilling
7 his responsibilities under the level 3 watch?

8 A. Yes.

9 Q. Did anyone before I've asked you these
10 questions today, go through and ask you similar
11 questions to this aside from your counsel?

12 A. No.

13 Q. I am sorry, I closed this document, but
14 there is one other thing I want to show you.
15 Mr. Bochenek's memo, which you looked from
16 October of 2019 showed concern whether there
17 were -- strike that. I will give you time to
18 read this entire memorandum if you want, I
19 don't think you need to.

20 A. I am all right.

21 Q. This memorandum concerned whether the
22 investigation had looked into whether watches
23 had been done, and in that context it sounds
24 like someone was asked to interview you, and I

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1 am highlighting this text here, which you
2 already read, assigned module officers were not
3 available for an interview. Do you see that,
4 sir?

5 A. Yeah.

6 Q. Do you remember in October of 2019,
7 around the time that this memorandum was
8 written, anyone reaching out to you to ask you
9 questions about what happened on Mr. Freitag's
10 cell block that day?

11 A. No.

12 Q. To confirm, your recollection is you
13 don't remember anyone asking you questions like
14 the questions I just asked you at any time
15 before today other than your counsel; is that
16 right?

17 A. I don't remember Frank Bochenek asking
18 me any questions.

19 Q. You don't remember anyone else
20 affiliated with the prison asking you questions
21 like this today; is that right?

22 A. No.

23 Q. At the beginning of the deposition I
24 asked you whether there was anything you could